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JOINT APPENDIX

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1980

* * *

NO. 80-1538

* * *

JAMES PLYLER, Et Al.
V.
J. AND R. DOE, Et Al.

* * *

NO. 80-1934

* * *

STATE OF TEXAS, Et Al.
V.
CERTAIN NAMED AND UNNAMED
UNDOCUMENTED ALIEN CHILDREN, et.al.

VOLUME A

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DOCKET ENTRIES

A. DISTRICT COURT:

9/6/77	Original Complaint, Attorney John C. Hardy Accepted Service For The Tyler Independent School Board.
9/9/77	Oral Hearing On Plaintiff's Motion For Preliminary Injunction.
9/12/77	Order Preliminary Enjoining Defendants From Refusing To Enroll Minor Plaintiffs In The Tyler Public Schools Or Requiring Them To Pay Any Tuition Fee...
10/25/77	Order That This Action Be Maintained As A Class Action On Behalf Of All Undocumented School Age Children Of Mexican Origin Residing Within The Tyler Independent School District.
12/5/77	Defendant's Original Answer.
12/12/77	Case To Trial On The Merits...
1/5/78	Amended Complaint of Plaintiffs.
9/14/78	Memorandum Opinion.
9/14/78	Permanent Injunction.
10/10/78	Notice of Appeal By Defendants.
10/17/78	Notice of Appeal By State Of Texas.

5TH CIRCUIT:

10/23/78 Date Docketed.

10/20/80 Opinion Rendered.

11/17/80 Order Denying Rehearing.

11/26/80 Judgment As Mandate Issued to Clerk.

12/18/80 Filing Appellants' Notice of Appeal To U.S. Supreme Court.

ORAL HEARING ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION SEPTEMBER 9, 1977

TESTIMONY PRESENTED BY PLAINTIFFS

H. LOE

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a witness called by the plaintiffs, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

By Ms. Rodkin

Q. State your name, please.

A. H. Loe.

Q. What is your address, H. Loe.

A.

Q. Is your address within the boundaries of the Tyler Independent School District?

A. Yes.

Q. Do you have any children?

A. Yes.

Q. What are their names and ages?

A. A. A. Loe, eleven years old.

THE COURT: What is that middle name?

INTERPRETER: (spelling).

THE COURT: Age what?

INTERPRETER: Eleven.

A. L. Loe, ten years old; M. D. Loe, eight years old; G. Loe, seven years old; M. A. Loe, six years old; C. Loe, five years old; H. Loe child three years old; M. Loe three months.

Q. Are any of your children American citizens?

A. One.

Q. Which one is that?

A. M. Loe.

INTERPRETER: M. Loe is the three-months-old citizen child.

MS. RODKIN: May I approach the witness, Your Honor?

THE COURT: Yes.

Q. I would like to show H. Loe what has been marked for identification as Plaintiffs' Exhibit 1, and does he recognize that?

INTERPRETER: Yes, he says it is the act of his son. It is the birth certificate given to him at Mother Frances Hospital at the birth of his son M. Loe.

THE COURT: M. Loe is now three months of age?

INTERPRETER: Yes, sir.

MR. HARDY: We have no objection at this time, Your Honor. We fail to see the materiality of this.

THE COURT: Since the child is not of school age, I think it is of doubtful materiality, but it will be received in evidence.

(BIRTH CERTIFICATE OF M. LOE FROM MOTHER FRANCES HOSPITAL -- was duly marked as: PLAINTIFFS' EXHIBIT NO. 1).

MS. RODKIN: Thank you, Your Honor.

Q. H. Loe, have any of your children attended the Tyler School District?

A. Yes.

Q. How many years have these children gone to school in the Tyler schools?

A. One year.

Q. Which children attended for one year?

A. A. A. Loe, L. Loe, M. Loe, D. Loe, G. Loe.

Q. What grades were these children in?

A. A. A. Loe in the fourth grade; L. Loe in the third grade; M. D. Loe in the second grade; G. Loe was in the first grade.

Q. Did M. A. Loe attend the Headstart Program in the summer of 1977 preparatory to entering first grade?

A. This summer M. A. Loe did attend the Headstart program to prepare himself for first grade.

Q. Are any of his children attending the Tyler schools now?

A. No.

Q. How did you learn that they would not be in school this year?

INTERPRETER: Last year he was told that he would probably have problems getting his children in the school unless he had some type of permission.

Q. Who told him that?

A. The Director of the school and an interpreter.

Q. Who is the Director of the school?

INTERPRETER: He does not remember the name at this particular point.

Q. Did he try to find out if his children could attend school this year?

A. Yes.

Q. What did he do?

INTERPRETER: His wife went to inform herself directly at the school and was told that there was nothing that could be done.

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Q. Did anyone inform him to a right to a hearing before the children would not be allowed in school?

A. No.

Q. H. Loe, when did you come to Smith County?

INTERPRETER: He doesn't know what Smith County is.

Q. When did he come to Tyler?

A. In 1974.

THE COURT: Excuse me. Is there some disagreement?

MR. IDROGO: Yes, Your Honor, he did not translate Smith County. He said, "Smith County," and Smith County is not a translation.

(REPORTER'S NOTE: Mr. Idrogo retranslated the question.)

MR. IDROGO: 1974.

Q. Are you employed, H. Loe?

A. Yes.

Q. When you receive wage stubs, are federal and Social Security taxes withheld from your wages?

A. Yes.

MS. RODKIN: May I approach the witness, Your Honor?

Q. I would like to show you what has been marked for identification as Plaintiffs' Exhibit 2. Do you recognize this?

THE COURT: If you want to look at that, feel free to go up.

INTERPRETER: Yes, they are his check stubs.

(PHOTOCOPIES OF STUBS OF CHECKS TO H. LOE – were duly marked as: PLAINTIFFS' EXHIBIT NO. 2)

Q. Are these the check stubs you received from your employer in the past month or so?

A. Yes.

MR. HARDY: No objection at this time, Your Honor.

MS. RODKIN: We would move this into evidence, Your Honor.

THE COURT: How is it marked?

MS. RODKIN: Plaintiffs' Exhibit 2.

THE COURT: Plaintiffs' Exhibit 2 is received in evidence.

Q. H. Loe, have you ever bought a car when you were living in Tyler?

A. Yes.

Q. Did you have to secure registration receipt from the county tax assessor-collector's office?

A. Yes.

Q. I would like to show you what has been marked for identification as Plaintiffs' Exhibit 3. Do you recognize this?

INTERPRETER: Yes, this is what was given to him when he was given the license plates to his car.

MR. IDROGO: Your Honor, I wonder if we could clarify or let him know that these are exhibits.

THE COURT: That these papers are what?

MR. IDROGO: These are exhibits by the plaintiff. He just tells him, "Do you know this paper?"

(REPORTER'S NOTE: Mr. McAndrew asks the witness a question.)

INTERPRETER: He knows that.

MR. HARDY: No objection to Plaintiffs' Exhibit 3.

(PHOTOCOPY OF A TAX RECEIPT ON CAR LICENSE IN THE NAME OF H. LOE – was duly marked as: PLAINTIFFS' EXHIBIT NO. 3)

MS. RODKIN: Plaintiff would move this into evidence, Your Honor.

THE COURT: Any objection?

MS. CARDWELL: No, Your Honor, I do not.

THE COURT: Plaintiffs' Exhibit 3 is received in evidence.

Q. H. Loe, are you aware that the tuition fee is approximately $1,000.00 per year per child to attend Tyler schools if you do not have documents of lawful status in this country?

INTERPRETER: Yes, he does.

Q. Can you afford to pay $1,000.00 per year per child for your children to attend Tyler schools?

INTERPRETER: No, his salary does not meet that quantity of money.

Q. Is it correct that you would have five children in the Tyler schools this year, meaning a payment of $5,000.00?

A. Yes.

Q. And he cannot afford that sum of money?

A. No.

Q. Are his children in school anywhere right now?

A. In no area whatsover.

Q. Would your children be in the Tyler schools if no tuition were charged?

A. Yes.

MS. RODKIN: May I have a moment, Your Honor?

(REPORTER'S NOTE: Plaintiffs' counsel here confer out of the hearing of the court reporter.)

Q. H. Loe, do you or your wife have any documents showing that you are in this country lawfully?

A. No.

Q. Are you entitled to receive those documents, or are you, in fact, in the country unlawfully?

INTERPRETER: There is no way of obtaining them. To the second question, is he in the country illegally, the answer is yes.

TESTIMONY OF J. DOE

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EXAMINATION

By the Court

Q. What is your rate of pay?

A. By the week?

Q. Whatever.

A. Approximately $130.00 or $140.00. It varies.

Q. What was your approximate income last year during the year 1976?

A. I don't have the slightest idea.

Q. Were you being paid at the same rate during 1976 that you are being paid at the present time?

A. They used to pay me by the week, and they paid me $105.00.

Q. During the whole year of 1976?

A. Yes, that way.

Q. Do you own your own home?

A. No, I am renting.

Q. What rent do you pay?

INTERPRETER: He pays $50.00 rent.

Q. For what period of time?

A. A month.

Q. $50.00 per month?

TESTIMONY OF J. DOE

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THE COURT: Please be seated. Your may call your next witness. You may proceed.

MS. RODKIN: We call Mr. J. Doe.

THE COURT: Translate the oath for him, please.

BY MS. RODKIN:

Q. J. Doe, do you have any children who are American citizens?

A. One.

THE COURT: I'm sorry, but how many children were there, and what were their ages? Just repeat it for me. I'll ask her (indicating Ms. Rodkin).

MS. RODKIN: There are eight children altogether, Your Honor (sic). I believe the youngest is---.

THE COURT: What is the oldest one?

MS. RODKIN: Thirtteen.

THE COURT: And the youngest?

MS. RODKIN: I believe three.

THE COURT: And how many of them are of school age?

MS. RODKIN: Five.

MR. HARDY: I believe the testimony shows six children, Your Honor.

THE COURT: Six children of school age?

MR. ROOS: Five of school age, Your Honor, and one is not of school age. I believe that's the testimony.

MS. RODKIN: I'm sorry. I stand corrected.

THE COURT: All right, please proceed.

BY MS. RODKIN:

Q. I would like to show you what has been marked for identification as Plaintiffs' Exhibit 4, and does he recognize that exhibit?

A. What is it?

Q. Do you recognize it?

A. Yes, it is of the young child N. Doe.

THE COURT: It is of the young child's what?

INTERPRETER: N. Doe, his name, Your Honor.

THE COURT: Oh, I see.

Q. Is it N. Doe birth certificate?

A. Yes.

(BIRTH CERTIFICATE OF N. Doe – was duly marked as: PLAINTIFFS' EXHIBIT NO. 4)

MS. RODKIN: Plaintiffs would offer this into evidence as Plaintiffs' Exhibit 4.

MS. CARDWELL: No objection.

THE COURT: Plaintiffs' Exhibit 4 will be received in evidence.

Q. J. Doe have your children attended the Tyler schools in the past?

A. Yes.

Q. Did J. I. Doe attend the Tyler schools from the first through the sixth grade?

A. Yes.

Q. Did J. D. Doe attend the Tyler schools in Tyler from the first through the fifth grade?

A. Yes.

Q. Did E. Doe attend the Tyler schools from the first through the fifth grade?

A. Yes.

Q. Did Ed Doe attend the Tyler schools from the first through the fourth grade?

A. Yes.

Q. Did R. Doe attend the Tyler schools from the first through the third grade?

A. Yes.

Q. Are any of these children attending the free schools in Tyler now?

A. No.

Q. Is J. D. Doe in the Tyler schools now?

A. Yes.

Q. Have the other children been excluded from the schools, except for J. D. Doe?

A. Yes.

Q. Do you know why J. D. Doe has not been excluded from the schools?

A. No, I don't know.

Q. How did you learn that your children would not be able to attend the schools this year, unless they paid tuition?

A. Last year they came up to tell me at the beginning of the year they would have to pay.

Q. Who told him that? Who told you that?

A. Last year two ladies came – one of them was an interpreter. The other one was a school official.

Q. Do you know their names?

A. No.

THE COURT: Where did they come to, to his home?

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All right, please proceed.

BY MS. RODKIN:

Q. Can you obtain these papers?

A. Not now.

Q. Are you, in fact, in this country unlawfully?

A. Yes.

Q. When did you come to this country, J. Doe.

A. 1968.

Q. Have you been in Tyler since 1968?

A. Yes.

Q. Are you employed?

A. Yes.

Q. Does your employer withhold federal and Social Security taxes from your paycheck?

INTERPRETER: Federal and what?

MS. RODKIN: Social Security.

A. Yes.

Q. Did you file returns on your income with the federal government since you have been here?

INTERPRETER: Did you file returns with the federal government?

MS. RODKIN: Did you file income tax returns with the federal government since you have been here?

INTERPRETER: This is hard to translate, "file returns."

Q. Did you file income tax returns with the federal government since you have been here?

THE COURT: Perhaps counsel can help with this.

(REPORTER'S NOTE: Ms. Hanten assists interpreter.)

A. Like what thing?

INTERPRETER: This is what I meant, Your Honor.

MS. RODKIN: May I approach the witness, Your Honor?

Q. I want to show you what has been marked for identification as Plaintiffs' Exhibit 5.

INTERPRETER: Would the counsel tell me how to say plaintiff in Spanish?

(REPORTER'S NOTE: Ms. Hanten complies.)

A. The one that you use for the income tax?

Q. Yes, it's eight pages. Do you recognize it?

A. Yes, I do recognize these income tax forms.

Q. What are they?

A. It is where they send you money back or you have to pay.

THE COURT: I see he understand the concept. (LAUGHTER).

Q. Is this for the years 1969 through 1976?

A. Yes.

(COPIES OF INCOME TAX RETURNS FOR FROM 1969 THROUGH 1976 -- were duly marked as: PLAINTIFFS' EXHIBIT NO. 5).

MS. CARDWELL: I have no objection.

MR. HARDY: No objection.

THE COURT: How is it marked?

MS. RODKIN: Plaintiffs' Exhibit 5.

THE COURT: Plaintiffs' Exhibit 5 is received in evidence.

Q. J. Doe have you purchased a home in Tyler?

A. Yes.

Q. I want to show you what has been marked for identification as Plaintiffs' Exhibit 6. Do you recognize that?

A. Yes.

Q. What is that?

A. It is the contract of the house.

THE COURT: It is a what?

INTERPRETER: The contract.

Q. Is this the deed you filed at the County Courthouse

Yes, it is on the house I am paying on.

(COPY OF DEED TO PURCHASE OF HOME BY J. Doe was duly marked as: PLAINTIFFS' EXHIBIT NO. 6).

MR. HARDY: We have no objection, Your Honor.

MS. RODKIN: This is Plaintiffs' Exhibit 6.

THE COURT: Plaintiffs' Exhibit 6 is received in evidence.

Q. Have you ever purchased a car in Tyler?

A. Yes.

Q. I want to show you what has been marked for identification as Plaintiffs' Exhibit 7. Do you recognize that?

A. Yes.

Q. What are they?

A. 1968 Ford.

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Q. Are you receiving or is anyone in your family receiving any type of public assistance or welfare?

A. No, nobody is receiving it.

Q. Have you or your spouse or anyone on your children's behalf requested a hearing before any school official,

objecting to your children's denial of admission to the Tyler schools?

A. Just now, just when I spoke with Mr. Washington.

Q. Are your children able to speak the English language?

A. Yes.

MR. HARDY: Pass the witness.

REDIRECT EXAMINATION

BY MS. RODKIN:

Q. J. Doe, when did you receive your Social Security card?

A. When I came here for the first time.

Q. Did Z. Boe, S. Boe and X. Boe attend the Tyler schools for three years?

A. Yes.

Q. Were all three in school last year in the Tyler schools?

A. Yes.

Q. How did you learn that they were not going to be able to go to school this year?

A. I was waiting for the schedule or the cards to come for them to go to school, and they were never sent to me.

Q. Did Mrs. Copeland, a teacher, tell her children last year that they would not be able to go to school this year?

A. Yes.

Q. Did Mr. Mathis send the children home from school this year?

A. Yes.

Q. Did he send home Z. Boe, S. Boe and X. Boe.

A. Yes.

Q. Did anyone advise you of a right to a hearing before your children were not permitted at school?

A. No.

Q. When did you first come to Tyler?

A. In 1964.

TESTIMONY OF F. BOE

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a witness called by the plaintiffs, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MS. RODKIN:

Q. What is your name, please?

A. F. Boe.

THE COURT: Would you spell the last two names, please?

INTERPRETER: Your Honor, her name is F. Boe (spelling).

THE COURT: All right, please proceed.

Q. What is your address, F. Boe?

INTERPRETER: She doesn't know.

Q. Is it in Tyler?

A. Yes.

Q. Do you have any children?

A. Yes.

Q. What are their names and ages?

(PAUSE)

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MS. RODKIN: Perhaps it would save time if I went through them.

INTERPRETER: She's rather vague on some of her information, Your Honor, because she lost the birth certificates, and she can't remember the dates, so she's trying to recall them the best way she can, the dates.

Q. Do you have a child F. Boe, age twelve?

A. Yes.

Q. Do you have a child Z. Boe age thirteen?

A. Yes.

Q. Do you have a child S. Boe age eight?

A. Yes.

Q. Do you have two young children who were born in this country not in school yet?

A. Yes.

Q. Is that X. Boe and T. Boe?

A. Yes.

Q. And do you have one older child who has dropped out of school?

A. Yes.

Q. Named R. Boe?

A. Yes.

Q. Are those all your children?

A. Yes.

Q. Have you lived in Tyler since 1964?

A. Yes.

Q. Are you in this country lawfully?

A. No.

Q. Except for the two children, V. Boe and T. Boe, are your other children in this country illegally?

INTERPRETER: She doesn't know.

Q. Do they have any documents from the Immigration Service

No.

Q. Are your children in—?

A. I have a letter that was sent to me by a compadre, a close friend that was sent to me, but I don't know where it is.

Q. Are your children attending any school now?

A. No.

Q. Can you afford to pay the tuition fee of $1,000.00 per year?

A. No.

Q. Except for the policy of charging tuition for the Tyler schools, would your children be in the Tyler schools now?

INTERPRETER: She doesn't know.

THE COURT: I don't believe she understands the question.

(REPORTER'S NOTE: The interpreter repeats the question.)

INTERPRETER: She doesn't know.

THE COURT: Ask her this. If the school system were not charging tuition, would you send your children to school?

THE WITNESS: Oh, yes.

TESTIMONY OF J. ROE

DIRECT EXAMINATION

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BY MS. RODKIN:

Q. State your full name.

A. J. Roe.

(REPORTER'S NOTE: The interpreter spells the name for the court.)

Q. What is your address?

A.

Q. Is that in the City of Tyler?

A. Yes, in Tyler.

Q. Do you live within the Tyler Independent School District boundaries?

INTERPRETER: He says he does live within the Loop, the district.

Q. Do you have any children?

A. Yes.

Q. What are their names and ages?

INTERPRETER: He's got three children: A. Roe, ten; F. Roe, eight; N. Roe, six.

Q. Do you have any younger children that are American citizens?

A. Yes, I have two, one that is and one that isn't.

THE COURT: I'm sorry. I have two what?

INTERPRETER: Children, one that is an American citizen and one that isn't.

(REPORTER'S NOTE: Interpreter and witness converse.)

INTERPRETER: The name of the two children are J. Roe and An. Roe. The citizen is J. Roe.

Q. I want to show you what has been marked as Plaintiffs' Exhibit 10 and ask you if you recognize it?

A. This is a copy of the paper that was given of Jose of the birth certificate.

(BIRTH CERTIFICATE OF J. Roe was duly marked as: PLAINTIFFS' EXHIBIT NO. 10).

MR. HARDY: We have no objection.

MS. RODKIN: This is identified as Plaintiffs' Exhibit 10.

THE COURT: Plaintiffs' Exhibit 10 is received in evidence.

Q. Did your three older children attend the Tyler schools last year?

A. Two of them attended school last year, and the young one attended school this summer.

INTERPRETER: Possibly Headstart.

Q. Was that Noe that attended a summer program before entering the first grade?

A. Noe was the one that was in the summer program.

Q. How many years did A. Roe and F. Roe go to the Tyler schools?

A. Just one year.

Q. Are your children attending school in the Tyler schools?

A. No.

Q. Why is that?

A. They told me they weren't going to admit them any more.

Q. Who told you that they would not admit your children?

INTERPRETER: His wife told him another lady had taken them to school, and they told him they would not admit them without papers or permission.

Q. What kind of papers?

INTERPRETER: He thinks it was the papers of immigration or permission, or he doesn't know – maybe what the President said.

Q. Do you have any papers saying you are in this country lawfully?

INTERPRETER: He is not legally in the United States. He is illegally in the United States.

Q. Are your children, except for the youngest one, in this country unlawfully?

INTERPRETER: He said the other four are illegal, except for the youngest one.

Q. When you found out your children could not attend school, did anyone tell you you had a right to a hearing ahead of time?

A. No.

Q. When did you come to Smith County or to Tyler?

INTERPRETER: He's not very sure. It was either 1968 or 1969.

Q. Are you currently employed?

A. Yes.

Q. Where is that?

A. At

Q. I want to show you what has been marked as Plaintiffs' Exhibit 11, and do you recognize that?

A. Yes, it is my Social Security number.

Q. Are these your wage stubs from

INTERPRETER: Yes, he says they are. That's his badge number and Social Security number.

THE COURT: This is his what number and Social Security number?

INTERPRETER: Badge number.

THE COURT: Badge number?

INTERPRETER: And Social Security number.

Q. And on your wage stubs they have deducted federal and Social Security taxes. Is that right?

A. Yes, they take out income tax and Social Security and other things, and No. 4, which is United Fund.

(WAGE STUBS OF J. Roe FROM were duly marked as: PLAINTIFFS' EXHIBIT NO. 11).

MR. HARDY: No objection.

MS. RODKIN: We would move for admission of Plaintiffs' Exhibit 11.

THE COURT: Plaintiffs' Exhibit 11 will be received in evidence.

Q. Were you employed in 1976?

A. Yes.

Q. Where were you employed?

INTERPRETER: Yes, he worked in ____ and ____.

THE COURT: Where was this?

REPORTER'S NOTE: Interpreter and witness converse.)

INTERPRETER: (phonetic) and

THE COURT: In what city?

INTERPRETER: Here in Tyler.

Q. I want to show you what has been marked for identifi-

cation as Plaintiffs' Exhibit 12 and ask you if you recognize this?

A. Yes, these are the papers of the income tax.

(INCOME TAX PAPERS OF J. Roe were duly marked as: PLAINTIFFS' EXHIBIT NO. 12).

MR. HARDY: I have no objection.

MS. RODKIN: I move the admission of Plaintiffs' Exhibit 12.

THE COURT: Plaintiffs' Exhibit 12 is received in evidence.

Q. Have you ever purchased a car in Tyler, J. Roe?

A. Yes.

Q. I want to show you what has been marked for identification as Plaintiffs' Exhibit 13. Do you recognize that?

A. Yes, these are the papers of the title and the license plates of my car.

(CAR TITLE AND LICENSE PAPERS OF J. Roe - were duly marked as: PLAINTIFFS' EXHIBIT NO. 13).

MR. HARDY: We have no objection.

MS. RODKIN: Plaintiffs would move the admission of Plaintiffs' Exhibit 13.

THE COURT: Plaintiffs' Exhibit 13 will be admitted into evidence.

Q. Are your children attending school anywhere now?

A. No, nowhere.

Q. Can you afford to pay the tuition fee of $1,000.00 per year per child?

A. No.

Q. Would your children be attending Tyler schools if you did not have to pay the tuition?

A. Yes.

Q. Do you know of any other children, in addition to the ones who have been here, who have not been in the Tyler schools this year because they don't have papers?

INTERPRETER: At this moment he doesn't know.

MS. RODKIN: May I have a moment, Your Honor?

(REPORTER'S NOTE: Plaintiffs' counsel here confer out of the hearing of the court reporter.)

MS. RODKIN: Pass the witness.

TESTIMONY OF WILLIAM J. CHAMBERS

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Q. Would you state your name for the court, please?

A. William J. Chambers.

Q. What is your position? Where are you employed?

A. I am District Director of the Dallas District of the U.S. Immigration and Naturalization Service.

Q. Are you appearing here today pursuant to subpoena?

A. Yes, I am.

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BY MS. CARDWELL:

Q. How long have you been with the Immigration and Naturalization Service?

A. Twenty-seven years.

Q. Prior to Director what position did you occupy?

A. I was an Assistant District Director in Houston.

Q. In the district in which you are now Director, could you tell the court what that covers, what area that covers geographically?

A. Yes, it covers the hundred twenty northernmost counties of Texas and the complete State of Oklahoma.

Q. That, of course, includes Tyler?

A. Yes, it does include Tyler.

Q. Do you have an approximate idea or estimation or a way to make an estimate or idea of the number of illegal aliens that are in your district?

A. Well, for planning purposes, we have estimates of how many we feel are within our district, and this is based on past experience, the number of apprehens previously and things of this type, and we estimate that

there are some 235,000 within our complete district.

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Q. Do you have records, or is it possible to keep records on the people in terms of where they are, how many children they might have of school age?

A. No, we don't have specific recods of this type, no.

Q. Why is it so difficult or why can one not have those records?

A. Well, primarily, and one of the reasons why there are so many undocumented aliens within our jurisdiction is that we just don't have the manpower and resources to handle the situation. Consequently, we have this large concentration, and with this more or less being out of control, then we do not have records along these lines of the ones that are within our area. We have not had contact with most of these. These are ones that are in the area and are in illegal status, and we have not had the manpower or resources to remove them.

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Q. You say the main reason they come into the States is to obtain employment. In your dealings with the aliens who have come, those who have been undocumented or have been sent back, have you ever learned that there is a majority that are discouraged from coming into the State, because they don't have free educaiton here for illegal aliens?

A. That are discouraged from coming because they don't have free education?

Q. Right, is that a big discouragement to illegal immigration?

A. Not in my experience. This is not something that I have encountered in my experience.

Q. Based on your experience, if free education were available, would you think that would encourage or discourage immigration into the State, if free education were available for illegal aliens?

A. Well, it certainly wouldn't discourage additional immigration, because this would be an additional benefit that they could derive by being in the United States, yes.

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Q. In terms of the aliens that are illegally in the country from Mexico, is it your experience that they are almost one hundred percent Spanish-speaking and not bilingual?

A. Well, of course, we have aliens from many, many countries of the world. They are predominantly Mexicans in our case in this part of the country, but, for instance, our office last year handled aliens from sixty different countries, but, as you say, predominantly they are from Mexico and also predominantly they do not speak English.

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CROSS-EXAMINATION

BY MS. HANTEN:

Q. Mr. Chambers, you have testified that one of the ways an alien can adjust his or her status is through family relationship, and you mentioned the parent-child relationship.

A. This is correct.

Q. What age does the child have to be to petition for his or her parents—?

THE COURT: Would you put the microphone a little closer to your mouth? What age what now?

Q. At what age may a citizen child petition for his or her parents?

A. They have to be twenty-one years old to petition for a parent.

Q. So that a family here illegally with one citizen child has no way at the present time to adjust their status through the citizen child?

A. Through the citizen child, no.

Q. Isn't it true that certain amendments to the Immigration and Naturalization Act became effective this last January?

A. This is correct.

Q. And isn't it true that those amendments set a number of visas which would be available for Mexican immigrants?

A. Yes, this is correct, not only Mexican, but all Western Hemispher.

Q. And that number is 20,000?

A. The basic number is 20,000. In addition or additionally, whatever number of immediate relatives can come in over and above that number, yes.

Q. Any number of immediate relatives can come in?

A. That's right.

Q. So could 100,000 immediate relatives come in, or is there some other limitation, other than the 20,000 base?

A. No, the immediate relatives fall outside any numerical limitations.

Q. Then is it the case that every visa application made during the year for an immediate relative is granted?

A. It would not be necessarily granted within that year, but if they are eligible, if it is a bona fide application, yes, it would be approved.

Q. At some time?

A. Yes.

Q. But during the pendency of that period the person who has been petitioned for does not have legal status in the United States. Is that correct?

A. That's correct.

Q. So until the visa is granted, after whatever period of time the person in question remains an illegal – remains an undocumented alien in the United States?

A. They remain an undocumented alien. We have various provisions, depending on individual circumstances, as to whether we leave them here for a period of time or periods of time, or whether they are removed from the country, yes.

Q. But that is at the discretion of the agency. Isn't that correct?

A. Yes.

Q. When you testified that during the past year 44,000 visas for Mexican nationals were granted, that was prior to the Idleburgh Amendments or the January Amendments to the Immigration and Naturalization Act?

A. Yes, I am referring to fiscal year '75.

Q. Will the passage of the Idleburgh Amendments and the change in the Immigration and Naturalization Act, which took effect in January, affect the number of visas granted to Mexican nationals for this coming year and succeeding years?

A. Well, that's a matter of opinion. I don't know for sure. It depends, really, on the demand for visas from Mexico.

Q. What is the normal number of visa applications filed on behalf of Mexican nationals each year?

A. Well, this has fluctuated over the years, and just like, as you mentioned, this new law makes a difference in the people that are eligible. For instance, prior to the change of the law, U.S. citizens could not petition for brothers and sisters within the Western Hemisphere. Now they can, so there are some changes in the law, and it would only be a projection on my part to say how many will apply. Now, in our own operation we have had quite an increase in the number of applications that we have been receiving sinc ethis law has gone into effect.

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Q. From the time the citizen petitions for a non-citizen spouse until the non-citizen spouse visa is granted.

A. O.K., this will vary, depending on what office they are applying through, because we have backlogs within our Service due to lack of personnel and the volume of business, and this waiting period within our Service varies from office to office.

Q. What is the backlog in your office, the average backlog?

A. It has recently improved considerably since we are working seven days a week, but now, the type you're talking about, from the time they submit the petition in probably about three months we will approve the petition in about three months, and then, of course, it depends on what their eligibility is from that point, whether they can apply for change of status in the United States, or whether they have to depart the country and get their visa outside the country.

Q. How long is the average wait on a visa application by a permanent resident spouse on behalf of a non-citizen spouse or a non-resident—?

A. These are processed the same.

Q. Would it be the same time?

A. Yes.

Q. Do you have any opinion as to whether your office processes these applications on an average faster than offices in the surrounding area, slower than offices in the surrounding area or at the same rate?

A. And by surrounding area—?

Q. Texas. You have the northern counties of Texas and Oklahoma.

A. Right.

Q. How about the southern counties of Texas?

A. O.K., for the past year the Dallas office and Houston office have the largest backlog within Texas. The other offices were much more current. In the last three months our backlog has decreased considerably. In fact, three or four months ago our backlog would be almost – it would take almost a year before we were able to process a petition of this type. Now, it would take probably ninety days.

THE COURT: You anticipate that the time will decrease in the future?

THE WITNESS: Well, of course, I hope it does, and it just depends on personnel. Three months ago we had 10,000 applications of all types pending in my particular office. We now have 3,000 something, but this is not due to an increase in personnel. This is due to working Saturdays and some Sundays. We, of course, can't do this indefinitely. Hopefully, we'll get enough employees so it will become a shorter period of time but---.

THE COURT: I see your service and the judiciary have the same problems.

THE WITNESS: Right.

THE COURT: Go ahead.

BY MS. HANTEN:

Q. You also testified that some occupational skills make people eligible for service in the United States.

A. That's correct.

Q. What type occupational skills might those be?

A. Well, this depends on the findings of the Department of Labor. To go through this procedure the alien and the employer makes an application for labor certification, which the labor certification, in effect, says that there are not sufficient people in the United States with these skills, so if they so certify, and there is a visa available in that category, then they can get permanent residence on that basis.

Q. In your experience, what are some samples of those types of skills?

A. Well, normally, they are the higher skills, plus certain areas that there shortages in. For instance, there are certain types of welders that can get labor certifications. There are certain types of engineers that can and certain types that cannot, depending on what areas they are in. It depends on the supply within the United States, actually.

Q. But, generally, these are fairly specialized skills?

A. Usually.

THE COURT: Would you excuse me? Is there any reason to keep spectators out of the courtroom now?

MR. ROOS: I can't think of any reason.

THE COURT: All right, anybody who wants to come into the courtroom may do so.

THE MARSHAL: All right, sir.

Q. Could you explain the preference system under the Idleburgh Bill?

A. Well, of course, this is generally what I have been talking about. The occupational categories – there are two of them. The third preference and the sixth preference are based on occupations. The third preference are the highly skilled areas. These are the areas that doctors and people of this type come in. The sixth preference are primarily those areas that there is a shortage of like skills in the United States. They are not necessarily highly skilled. There could just be a shortage of them.

Q. What is the first preference?

A. It's a spouse of a United States citizen.

THE COURT: What is the what?

MS. HANTEN: The first preference.

Q. And the second preference?

A. That's a spouse of a resident alien, I believe. Don't pin me down on all these different preferences as to specifics, but first and second are based on relationship, and they are spouses, spouses of United States citizens and spouses of resident aliens. Then you have the unmarried children of United States citizens, unmarried children of resident aliens down the line, but the first and second, fourth and sixth are the—.

Q. Are the relationships?

A. Right.

Q. And the third and the sixth (sic) are the occupational--?

A. Right.

Q. If a person is not eligible to apply for a visa under one of these preferences, may they still attempt to apply for a visa?

A. Well, they would not be successful unless they are eligible.

Q. In order to be eligible for a visa, they must fit one of these preferences?

A. They must fit one of these preferences, right, or, not included in the preferences are the immediate relatives, which are outside the preferences.

Q. But at the present time citizen children under twenty-one years of age are not considered to be immediate relatives for the purposes of petitioning for their nonresident relatives to enter the United States?

A. That's correct.

Q. You testified also about the ability to change your status, once you have come in the country on a temporary status. If someone enters on a visitor's visa and overstays that visa and lives and works in the United States, does the fact that that person came in on a visitor's visa give that person any advantage in adjusting his or her status to that of a permanent resident?

A. Yes, it is possible that it would. To back up, if they did not come in under those circumstances, if they weren't legally admitted, then they are patently ineligible. If they came in in legal status as a visitor, for instance, and overstayed, then they would not be precluded from adjusting their status. Now, of course, there's one other stipulation, Section 245, and that is, they cannot have entered into or continued in illegal employment.

Q. So a person who comes in as a visitor or a student, for example, overstays that visa and goes to work, is not eligible to adjust his or her status to that of a permanent resident?

A. That's correct. If they entered into illegal employment subsequent to the date of this new law.

Q. Further, would not a person who came in on a visitor's visa in order to adjust his or her status in the United States have to go through the regular petition process and fit under one of the preferences previously discussed?

A. Yes, uh-huh. Let me add one thing to this. Adjustment would not – a person who is an immediate relative, falling into the category you're talking about, coming in as a visitor and commencing illegal employment and, for instance, marries a United States citizen, which would make him an immediate relative, they would not be precluded from adjustment of status in the U.S. In other words, the illegal employment does not affect an immediate relative.

Q. But they have still got to go through the regular petition process?

A. Yes.

Q. And the fact that they have entered on a visitor's visa does not give them any advantage in adjusting their status. They still adjust on the basis of the fact that they are a spouse of a citizen?

A. Well, if they had not entered with a permit as a visitor, they would not be eligible to adjust. They would have to get their visa outside the country.

Q. Oh, I see, but their eligibility for adjustment of

status, their eligibility for permanent residence comes as a result of their marriage to the citizen and not as a result of their having entered on a visitor's visa?

A. Correct.

Q. Does your office have any mechanism by which they send out letters to people who are eligible at some time in the future for admission to the United States, saying that they will be eligible for admission at some later time?

A. I'm not sure that I understand your question, but there are, for instance, in the area of eligibility based on their occupation, if a petition is submitted for them in that area, they are eligible. Then this petition will be approved. If there are no visas available at that time, then they will be told that there are no visas available. At the time when visas become available, you will be so notified. I assume this is the area you're talking about.

Q. But if there are no visas available at the time, and the persons are in that category which would make him or her be eligible for a visa when one becomes available, there's no interim type of notification that your agency sends to that person?

A. We notify the petitioner of the approval of the petition and notify them also that there are no visas available.

Q. And what is the status of that person in the interim period?

A. Well, if they have no other equities, then they have no claim to remain here, because there's nothing available to them at that time.

MS. HANTEN: Thank you. I have no further questions.

MS. CARDWELL: We have no other questions, Your Honor.

EXAMINATION

BY THE COURT:

Q. Assume this situation, if you will, please, sir.

A common laborer in Mexico, a citizen of Mexico, illegally crosses the border and comes to this area of the state. He has a family -- let's say by way of example, nine or ten children. Assume that one or two of them -- say two of them are born here in the United States during the period of his illegal residence here. In order for this common laborer to seek admission to the United States, what would he have to do -- legal admission?

A. Well, the two American-born children would not give him eligibility, so the only thing left under which he could qualify is if he could qualify through his occupation.

Q. Well, is there a demand for common laborers in the United States of Mexican descent or Mexican citizenship?

A. Of course, the nationality wouldn't enter into it, but not just common laborers. They normally will not certify for just common laborers.

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Q. Do you know whether or not the Immigration and Naturalization Services has made known its plight insofar as the shortage of personnel is concerned to the Congress of the United States?

A. I certainly do, yes, sir.

Q. What are the facts in that regard?

A. We definitely have made our plight known, and, of course, one thing that enters into this is the present package that the President has submitted concerning the alien situation in the United States.

Q. I was going to inquire about that. Go ahead and expound on it.

A. Well, this, of course, in order to effect a package of this type, would require additional resources in order to do it. Now, of course—.

Q. What has the President proposed, in essence?

A. Well, he has proposed, initially, that employers who knowingly hire illegal aliens would be subject to a penalty. He has proposed that aliens who entered the United States illegally prior to January of 1970 and have remained here since that time would be granted permanent residence—.

Q. Permanent residence or citizenship?

A. Well, it's permanent residence. The newspaper used citizenship, but permanent residence is always a prelude to citizenship. They don't get citizenship initially, just like all of the people that are naturalized in your court here. They have to come in and meet certain residential requirements after they have come into permanent residence before becoming a citizen, and this is the same thing in his package. They become permanent residents, and then with the appropriate residence, they can then apply for citizenship. Then those who entered between January of 1970 and January 1st, 1977, would be given temporary residence,

which is something new. We have never had a status of the type that he is referring to in that particular category, and this would be limited to five years, according to the initial program, and also included, which it gets into the budget area, is increased personnel to enforce immigration laws.

Q. Is this in the form of legislation presently pending before Congress?

A. No, sir, this is a package that the President has presented, and Congress will be holding the various hearings on this before it gets to the point of any action on it.

TESTIMONY OF MICHAEL P. McANDREWS

[page 167]

Q. During your employment here in Tyler as a counselor approximately how many persons do you see in the course of a week or a month or whatever you are comfortable with?

A. On a monthly basis we attend anywhere from ninety-five to a hundred twenty-five.

Q. Are these people that you see for purposes of counseling with regard to their legal status in the United States?

A. Approximately, I would say, one-third of those people are persons who are coming in for immigration counseling.

Q. Do you have familiarity with the immigration or the status of the named plaintiffs in this litigation?

A. I really am not at liberty to say, due to the fact that

any immigration counseling is kept completely and totally confidential.

Q. As a result of recent changes in the law, have you encountered here in Tyler in the course of your counseling people who have no chance to upgrade their status to permanent resident aliens?

A. Yes, the majority of our people that, you know, are here without papers are in that category.

Q. Why is that? Why can't they upgrade their status?

A. Well, basically, it's just as Mr. Chambers has said. There's just nothing under the law at the present time. We have the immediate relative section, and we also have the preferences, and these people do not fall within the immediate relatives, and they do not fall within the preferences; therefore, their only hope is some type of a special program given by the President and Congress.

Q. Are the special programs of the sort that you're talking about a very common occurrence?

A. No, they are not.

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Q. If the parents of the plaintiffs were to go directly to the Immigration and Naturalization Service and make an application, would they thereby reveal that they are in an illegal status here within the country?

A. That is right.

Q. What would be the likely result?

A. The likelihood of this would be that they would counsel them as to whether they could apply under the

law, and if they didn't apply under the law, they would be given voluntary departure notices.

Q. Is there the possibility that they would be deported?

A. Yes, they would be given a certain amount of time to leave the country.

Q. If, on the other hand, they left the country and then made application, how long would it likely be before they could get back into the country, assuming they could at all?

A. If they applied under the law, it would be the same thing as if they were here. There would really be no difference.

THE COURT: All right, you may stand down.

(WITNESS STANDS ASIDE).

TESTIMONY OF MR. JIM PLYLER

[page 183]

Q. Do you have the exact date? There seems to be some confusion.

A. It was the July Board meeting, and I was out of town.

VOICE FROM THE AUDIENCE: 21st.

A. July 21st.

Q. Is it your understanding that this policy was adopted pursuant to Section 21.031 of the Texas Education Code?

A. Yes, sir, that's correct.

Q. Could you state the number of children – I realize estimates are probably the best to be done – who are within the Tyler Independent School District who are directly affected by this policy?

A. It would be strictly an estimate. I have no way of knowing. We figure about between thirty and forty.

THE COURT: That's children?

THE WITNESS: Children, yes, sir.

Q. Now, under your interpretation of this policy who is required to pay tuition?

A. Any illegal alien that resides in the district that attempts to enroll in school.

Q. Could you tell me how the figure of $1,000.00 per year tuition was established?

A. Yes, we divide the general operating budget by the average daily attendance, and that figure is the cost per student per year.

Q. So that's the number of students divided into the total budget?

A. The average daily attendance divided into the expenditure, general operating budget.

Q. Does the reduction of one child from the Tyler Independent School District mean that the school district will have a cost of less – the budget will be able to be decreased by the sum of $1,000.00?

A. I don't believe I understand your question.

Q. The question is that you have allocated $1,000.00 per pupil per year for tuition. The question is that if a pupil is withdrawn from the school district, does that mean that the school district will thereby save $1,000.00?

A. No. Now, we don't figure the budget in that manner. The budget total is determined by the auditor at the close of the school year, and by dividing the average daily attendance earned by the students enrolled in the district, it determines the cost per student.

Q. There are within the school district certain fixed costs that unless there is a substantial reduction in the enrollment would remain, is there not?

A. That's correct.

Q. One of the largest expenses in running a school district, I assume, is the teacher salaries. Is that correct?

A. That's correct.

Q. Approximately what percentage of the annual budget does that constitute?

A. About eighty percent.

Q. As a result of this policy adopted by the Tyler Independent School District, have you been able to reduce your teaching staff, though?

A. No, sir, we have not reduced the staff.

Q. Of your total budget what is the approximate percentage of money that comes from local sources, from state sources and from federal sources?

A. About thirty percent from local sources, about sixty-

seven percent from state sources, and it varies one to two percent from federal sources.

THE COURT: Well, do you get any aid from the federal government that is not reflected in your budget?

THE WITNESS: Yes, sir. Under our program for disadvantaged youngsters. That figure is the one or two percent, and I was trying to figure it in my head, because, ordinarily, it is not part of the regular general operating budget. It is over in another section.

Q. Could you state in your opinion why the district adopted the policy that is here in question?

A. Yes, sir, when this law went into effect, 21.031, in 1975, there were very few illegal alien children in the district. There were a few, and I guess I was soft-hearted and concerned about the kids, not wanting to penalize them for something the parents had done, so we did not implement the law in '75-'76 or '76-'77, but then the numbers began to increase considerably, and as a result of that, it did begin to cause some problems in overcrowded facilities, so it was in my opinion that we must implement the law to prevent Tyler being a haven for families moving into the district to get an education.

Q. The way the policy is implemented there is no effort to admit those who are tax contributors and to exclude those who are not. Is that correct?

A. No, sir, their status as a citizen or illegal alien determines that.

Q. In your experience in the district and in living in Tyler, of the illegal aliens in the City of Tyler, what is their general economic status?

A. I would have no way to know that, counselor.

Q. Well, as a citizen here and as an observer for at least eight or nine years as Superintendent, would you have any opinion as to whether parents of illegal children would be able to afford $1,000.00 tuition?

A. I think it would be very difficult for them to pay the tuition.

Q. Have, indeed, any undocumented persons tendered the tuition?

A. I'm sorry?

Q. Have, indeed, any persons who have been found to be undocumented – have any of those persons tendered the $1,000.00 tuition charge?

A. I am not aware of that. The Personnel Department handles that.

THE COURT: Let me inquire, do you feel you would have been notified had one tendered the money?

THE WITNESS: Ordinarily not, Your Honor. That is another division.

MR. HARDY: May it please the court, would the court like me to elaborate or answer that question?

THE COURT: Yes, I would be very pleased.

MR. HARDY: Yes, there are illegal aliens paying tuition.

THE COURT: How many?

MR. HARDY: At this time we know specifically of two.

BY MR. ROOS:

Q. With respect to procedures in implementing this policy, could you describe what efforts were made to inform parents that the policy existed?

A. Yes, I know that in the spring some principals, some of our visiting teachers, some of our bilingual people began to contact Hispanic-origin people, trying to explain this policy to them in the hopes that they would initiate whatever was necessary for them to meet the policy, and then in August some of our principals made home visits, visiting with these parents who they knew were illegal aliens from the year before.

[page 191]

Q. If the approximate thirty or forty students were put into the Tyler School District at this time, what effect would that have on the education to other students that are presently there?

A. Not knowing where they reside, it would be difficult for me to answer. If many of them were located in one elementary school district, it could mean that we would have to add additional teachers.

Q. As far as their impact in the classroom, it has been your experience, has it not, that most of the illegal alien children are of limited English-speaking ability?

A. This is true.

Q. They qualify for bilingual education. Is that right?

A. Well, they qualify provided there are as many as twenty in one grade level. We do not have that enrollment at this time. We do provide special instructions for youngsters of limited English-speaking ability.

Q. So they would be put in a classroom with the English-speaking students and, although you do provide special training – and I'm not saying English speaking and differentiating on that basis, but I am differentiating on the basis of illegally admitted aliens and citizens. The attention that would normally go to those students would in part now be given to the illegal aliens that are in the classroom?

A. That is correct.

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EXAMINATION

BY THE COURT:

Q. Superintendent Plyler?

A. Yes, sir.

Q. Do you know whether or not other schools in this immediate vicinity have implemented the statutory policy enunciated by the Legislature in the form of this legislation?

A. No, sir, I do not, Your Honor.

Q. You don't know whether, for example, over at Athens or Jacksonville they have adopted regulations similar to your own?

A. No, sir, I do not.

Q. What is the total enrollment of students in the Tyler Independent School District approximately.

A. Approximately 16,000.

Q. And what is your total budget?

A. 18.5 million.

Q. Are there are any other classes of children who are required to pay tuition?

A. Yes, sir. Students who transfer from districts contiguous with the Tyler District. If there's a course offered in the Tyler School System that is not offered in another, they pay the difference in what the state pays and what the local district pays.

Q. That's the only tuition that is paid?

A. Yes, sir, that's correct.

Q. Well, are there any children from outside the Tyler Independent School District who attend the schools without tuition?

A. No, sir.

Q. Has there been any effort made to distinguish what the incremental cost of placing these children in school is? What would be the incremental cost for these thirty or forty additional children?

A. Your Honor, I don't know. That hasn't been looked at.

TESTIMONY OF MR. WAYNE KILGORE

[page 203]

Q. In your efforts to enforce this policy statement that was adopted this year it was not just to persons who were being first admitted this year that you were seeking to enforce the policy, was it?

A. We were seeking to enforce the policy, of course, as it was written. Special emphasis did take place because it was a new policy. When a new policy occurs, of course, well then, there's some special emphasis.

Q. But there were students who had attended school in the past before the policy had been adopted who were, in fact, illegal. Is that not correct?

A. That is correct.

Q. Did not the policy throw upon your shoulders the obligation of finding those students and informing them of the new tuition charge?

A. Yes, I think the policy would indicate to us that we did have this kind of feeling thrust on us, yes.

Q. Now, what process was undertaken to identify those students who were already enrolled who might be illegal?

A. In March and April of the last school year we attempted to find out numbers, to find out precisely who might be in the category of not having official documentation. We have about 340 Hispanic students in the school district.

THE COURT: How many did you say?

THE WITNESS: 340.

THE COURT: Hispanic students?

THE WITNESS: Uh-huh, of Hispanic origin.

A. Out of this 340 about ten percent were found to be lacking documentation, lacking legal status in our school district. In the process of discussing this, principals and in some cases people who had some ability in the Spanish language discussed the situation last school year toward the end, indicating that state laws had been changed. Policies were discussed, and that if at all possible, it might be wise to attempt to secure whatever legalistic documents were needed.

TESTIMONY OF MIRIAM J. JOSEPH

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FURTHER TESTIMONY PRESENTED BY PLAINTIFFS:

MILAM J. JOSEPH,

a witness called by the plaintiffs, having been first duly cautioned and sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. ROOS:

Q. Please state your name for the record.

A. My name is Milam J. Joseph.

Q. And you are a Catholic priest. Is that correct?

A. That is correct, sir.

Q. And what is your position with respect to the Catholic schools here in Tyler?

A. Well, I am pastor of the Immaculate Conception Parish, which means that on the local level I would be termed the Superintendent of the local Catholic school system, not to be confused, however, with the Diocene Superintendent of Schools in Dallas.

Q. Could you describe the extent of the school system that you superintend?

A. We have a school system from kindergarten through the twelfth year. Saint Gregory Elementary School is K through 6, located on South College. T. K. Gorman Senior and Junior High School on the Loop is from the seventh years to the twelfth year. It is a coed school, accredited school under the Texas Education Agency.

Q. Now, with respect to the elementary school for the moment, what is the size of the elementary school in terms of students?

A. I'll have to add here. In Grades 1 through 6 there are 189 students, I think, if my addition is correct, and in Kindergarten -- there's a total of 217 students.

Q. Now, have you had an opportunity to compute whether you have space available in the different grades at the present time in that school?

A. Sister Terez, who is the principal of the elementary school, we have talked about this on various occasions, and the latest figures are as follows:

In this first grade there are 33 students, which means there is no capacity for anyone in the first grade. The same is true in the second grade, 33 students. It is above capacity. In the third year we could take one child. There are 29 students. We could reasonably take one child. In the fourth year we could

take two children. There are 33 students. We could go to a capacity of 35. In the fifth year we could take one child. There are 34 students. In the sixth year there are 32 students, which gives us added capacity of 3 children.

Q. Father, is there a tuition charge for attending the elementary school?

A. Yes, there is a registration fee together with a tuition charge. The tuition charge is, well, there are various ways that we do this. There is a set tuition charge of $50.00 a month for the first child and $25.00 a month for the second, third, or fourth child in any particular family. If a person is a non-parishioner, their charge is $75.00 a month. This is computed over a twelve-month period.

Now, I must be fair in adding that in any and all situations there is a certain negotiation that takes place with regard to ability to pay, so the point that I would make is that there is a tuition charge. If one is unable to pay it, we negotiate.

Q. I would imagine that you cannot take too many non-paying students. Is that a correct assumption?

A. Well, if we had all non-paying students, then we would be out of business, and the Immaculate Conception Church -- and this isn't any advertisement or anything -- but we subsidize the school system $140,000.00 a year. That's why the tuition that a parishioner would pay would be less than a non-parishioner.

Q. Now, with respect to the high school, have you computed capacity figures at the high school level?

A. Yes, our high school, according to the schedule that we follow now and the manner in which we conduct our classes, has a capacity of 240 students. We now have 225. Our smallest class in the high school is the senior class, which has 26 students. Then we could reasonably take 15 more students, provided they were in the right classification.

Q. You know you have an under-capacity as for seniors at the present time. There's space available?

A. That's correct.

Q. What about the other grades?

A. All right, we could take 2 students in the seventh year. We could take 9 students in the junior and senior – excuse me. Let me start over again.

We could take 2 students in the seventh year. We could take 2 students in the ninth year. We could take 7 students in the tenth year. We could take no students – we are oversubscribed in the junior year.

Q. Is the tuition the same amount in the high school, or is it different?

A. No, it is more in the high school. Generally speaking, it costs one-third more to educate a junior and senior high student than it does an elementary school student, so our cost in the high school for a parishioner is $60.00 a month for the first child and $40.00 a month, I think, for the second, third and fourth, and $100.00 a month for a non-parishioner. That does not include the books and the course fees. Once again, it is fair to say that we do negotiate on our tuition, particularly, with parishioners.

Q. There are some bounds, I would gather, ordinarily, because of the considerations we previously mentioned?

A. Yes, there are. There are some bounds.

MR. ROOS: May I approach the witness?

THE COURT: Yes.

(REPORTER'S NOTE: Counsel and the witness here confer out of the hearing of the court reporter.)

Q. Just one further question, Father. You mentioned that there was a registration fee. I guess you mentioned it primarily when we were talking about the elementary school.

A. And in the high school, a $60.00 registration fee.

Q. Is that per pupil?

A. Per student, yes.

CLOSING ARGUMENT OF ATTORNEY CARDWELL

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STATE DEFENDANT'S CLOSING ARGUMENT

MS. CARDWELL: I don't have as much to say as it looks like. I have just got a lot of notes.

Let me first address the preemption argument. I think if this court reads De Canas versus Bica, they cannot possibly hold that there is preemption in this case. They have tried to distinguish De Canas, but it is not distinguishable.

Education, like employment, has always been of local and state concern. 21.031 only regulates education in the State of Texas. It is not a federal concern, and it never has been. Rodriquez held that it was of state and local concern. They say that the enforcement of the statute is aimed at the alien. Well, the enforcement of this statute happens to be aimed at the Tyler Independent School District, because it is the Tyler Independent School District that does not collect money, because these children cannot be included in the ADA, so they don't collect money for them, so if they're in school, the money comes out of the Tyler Independent School District's pocket. It doesn't come from the state treasury, and the point—.

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are extending protection to the illegal alien, why don't they just say alien? I think there is a reason for always saying legal alien when you're talking about equal protection, as opposed to illegal alien.

I think that we have not only a rational basis behind our statute but probably a compelling state interest, and it's not an effort to control. Immigration is an effort to provide some standard of education for the citizens and legally admitted aliens that are already here. The portion of the 230,000 illegal aliens in this district, I think, is only a small portion of what is in the state, as indicated by some of the questions by plaintiffs' counsel. As you go farther south, in fact, it is much greater, and the impact on many schools would, in effect, put them out of business.

Our rational basis, our compelling state interest is in providing education for citizens and the legally admitted aliens, those that are here and those that we can take care of. It's a choice between providing good education for some or substandard education for all.

There will be problems of planning. There's no way to really know where they are and who they are. They're transient. They move in and out of the school system. It would put a great burden on the bilingual education program, and I think, in effect, it would inundate our school system to a point that we would be providing ineffective education for our citizens and legally admitted aliens.

THE COURT: Let me ask you this. Haven't you by your questions to the Superintendent and by his answers indicated that it is the policy of the Tyler Independent School District to deter illegal entry by means of this regulation?

MS. CARDWELL: I didn't. I didn't. It is not a policy of Tyler to deter illegal entry. There's nothing about any statute we have, I think, that affects entering this country.

THE COURT: Well, I thought you made it quite a point in your interrogation of the Superintendent and by his answers that this would act as a deterrent to illegal entry. Am I wrong about my interpretation of that?

MS. CARDWELL: I don't think I asked the Superintendent anything at all about—.

THE COURT: Well, maybe it was your co-counsel who asked those questions.

MS. CARDWELL: Are you thinking about my questions to chambers where I asked him if he thought that we encouraged or discouraged immigration into the country by the present statute and if, in fact, we allowed it, it would be a clear indication we would?

THE COURT: Well, I want to know what is your interpretation of that series of questions that you asked him.

MS. CARDWELL: Well, I think it is his opinion that people don't really at this point -- are not, you know, discouraged from coming to the state because we don't give them education. They come for employment, so that doesn't really make any difference, but there are probably some who, if they thought they could get a free education would come for that purpose too, and that would encourage. The statute as it is now---.

THE COURT: Looking at it from the reverse standpoint, this would have the effect of discouraging.

MS. CARDWELL: Well, he says as it is now, he does not think it affects immigration either way, but there are people who would come for that purpose. As the statute is now, I think any impact it would have is extremely speculative and very far removed, just like in the Bica case in California. We don't actually affect, as we are now, immigration into the country. They're coming for jobs, and they want jobs, so they're not really interested in the fact that their children are not going to get an education. That's not a deterrent to people that are coming into the country.

THE COURT: Well, we have here a suit by these very people that you're talking about.

MS. CARDWELL: But they want a free education. They have been successful in evading Immigration, and they would like to have a free education. Sure, I would like to have a free education too, but it, obviously, doesn't kee them out of the country, because they're here.

THE COURT: All right, thank you.

You may speak.